

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LOUBERT ALEXANDRE, YVON AUGUSTIN,
MAX CHARTELAINE, WILFRED GERMAIN, CLAUDE
LESSAGE, and JEAN PIERRE, INDIVIDUALLY AS
OWNERS OF YELLOW CAB MEDALLIONS IN THE
CITY OF NEW YORK AND ON BEHALF OF A CLASS
OF ALL OWNERS SIMILARLY SITUATED, AS WELL AS
INDIVIDUALLY, TOGETHER WITH MAMNUNUL HAQ
and ASIM AKHTAR, AS HOLDERS OF HACK
LICENSES IN THE CITY OF NEW YORK AND AS
REPRESENTATIVES ON BEHALF OF A CLASS OF
ALL HOLDERS OF HACK LICENSES IN THE CITY OF
NEW YORK, and the NEW YORK TAXI WORKERS
ALLIANCE,

Plaintiffs,

- against -

THE NEW YORK CITY TAXI AND LIMOUSINE COM-
MISSION, MATTHEW DAUS, AS COMMISSIONER
/CHAIR OF THE NEW YORK CITY TAXI AND LIMO-
USINE COMMISSION, AND THE CITY OF NEW YORK,

Defendants.
-----X

STATE OF NEW YORK)
 SS.:
COUNTY OF NEW YORK)

WILFRED GERMAIN, being duly sworn, deposes and says:

1. I am the plaintiff in this proceeding and make this affidavit in support of the instant motion for a temporary restraining order and preliminary injunction.
2. I reside in Elmont, Long Island, New York. I am a small business owner who owns both a yellow cab medallion and a yellow cab vehicle. My medallion number is 5A35. My hack license number is 450273.

Civil Action No.

AFFIDAVIT OF
WILFRED GERMAIN

3. I bought my medallion in year 2000 for the price of TWO HUNDRED AND FIFTEEN THOUSAND DOLLARS ("215,000").

4. I bought my yellow cab vehicle, which is a Toyota Sienna, in 2005, for approximately TWENTY SIX THOUSAND DOLLARS ("26,000.00") and spent an approximately an extra FOUR THOUSAND DOLLARS ("4,000.00") to prepare my car to operate as a yellow taxi vehicle (referred to as the "hack up"), totaling a cost of THIRTY THOUSAND DOLLARS ("30,000"). I borrowed the \$30,000.00 from Melrose Credit Union to be able to pay all cash for this purchase and am currently paying off the loan.

5. My sole means of livelihood for the last fifteen years has been to drive my yellow taxi vehicle. I drove my yellow cab to earn my livelihood from approximately 1991-2002. Due to a car accident in 2002, I have since not driven my yellow cab but have leased my medallion to two drivers who drive the car six days a week and pay me a weekly lease. I am still responsible for all associated costs of the medallion and vehicle even if I don't drive the car myself. I plan to start driving my yellow cab again in the upcoming fall of 2007.

6. My monthly operating costs of my medallion and yellow taxi cab are approximately FOUR THOUSAND DOLLARS ("4,000.00"), itemized roughly as follows:

A)	Medallion Loan Payment:	\$2,025.00 per month
B)	Yellow Cab Vehicle Loan Payment:	\$573.00 per month
C)	Yellow Cab Vehicle Insurance Payment:	\$615.00 per month
D)	Rate Card:	\$1410 every two years
E)	¹ Workers Compensation:	\$2,500 per year

¹For the last 3 and half years, since due to my accident I have not driven my taxi, I must pay for workers compensation to cover the two drivers who lease my taxi weekly.

F)	Tax Stamp:	\$1,000 per year
G)	Oil Change:	\$200.00 per month
H)	License Renewal Fee:	\$120 every two years
I)	Annual Drug Test Fee:	\$25 per year
J)	Wear and Tear/Maintenance:	\$5,000 per year ²

7. The two drivers who drive my yellow cab pay a weekly lease payment to me: one driver pays me FIVE HUNDRED DOLLARS ("500.00") and the other driver pays me FOUR HUNDRED DOLLARS ("400.00"). Therefore, I receive a total of NINE HUNDRED DOLLARS per week in lease payments.

8. Defendant TLC has declared mandatory that before August 1, 2007 I sign a contract for the installation of the Taxi Technology System ("TTS") with one of their chosen vendors. The pieces of equipment necessary to operate TTS are: 1) a text message box; 2) a credit card machine; 3) a Passenger Information Monitor and 4) software to create an electronic trip sheet, which includes GPS technology. All of these items must be physically installed inside of my taxi by no later than November 5, 2007, which is my first inspection date after October 1, 2007.

9. For installation of the TTS technology, TLC is forcing me to bear an upfront installation cost, which I understand, from the TLC website, the TLC has estimated to be between "\$10 and \$4,115."

10. From the TLC's website, I have learned that the TTS technology also requires me to

²This figure of \$5,000.00 is without taking into account the possibility of the cost of a new transmission, which arises approximately every two years. If my yellow taxi vehicle needs a new transmission, this number easily doubles. For example that in January 2007, I just had to buy a new transmission for my yellow cab vehicle in the amount of FOUR THOUSAND FIVE HUNDRED DOLLARS ("4,500.00") and the mechanic kept my vehicle in the shop for one month.

pay to the vendor a monthly service fee which I understand the TLC has estimated to cost me "between \$43 and \$200."

11. I also understand from the TLC website that the TLC cites the maximum costs of the technology over the term of a contract as being "between \$2,900 and \$7,200 based upon the contract between the vendors and the TLC, advertising fees may offset costs."

12. TLC's new TTS rules, which are posted on the website, also mandate that if the technology malfunctions, I am required to report it within two hours and it must be repaired within forty eight hours from the particular vendors' service center.

13. Each time the technology malfunctions, I will have to take my medallion and vehicle off the road and lose my livelihood while I take the taxi to the repair shop and for the time period my taxi is kept off the road while the malfunction is being fixed, without any compensation by the TLC.

14. The TLC's rules also say that I must bear the cost of the transaction fee for each credit and debit card transaction which they have estimated will be no less than 2.5% and may be as high as five percent (5%) of each fare. I believe that such transaction fees will result in a huge loss of revenue for me.

15. I do not believe I can afford the burden of the extra imposed costs of TTS no matter which vendor I choose to sign with.

16. The TLC is forcing me to take on these costs when I am already burdened with the present operating costs of my medallion and yellow taxi cab vehicle.

17. I have not signed a contract with any of the vendors to date.

18. On or about August 24, 2007, I received Summons #PIM0086 from the TLC requiring my appearance for a hearing scheduled at 2:20 P.M. on September 6, 2007 charging me with a violation of TLC Owner Rules Sec.1-11(g) for failure to sign a contract with a TLC authorized vendor to “buy, lease, rent or use a Taxicab Technology Enhancements System and Service for [my] medallion”. Violation of Rule 1-11(g) carries a penalty of “\$250 and suspension until compliance”. See Copy of Summons #PIM0086 as Exhibit A attached hereto. See copy of Rule 1-11(g) in TLC’s TTS Regulations attached as Exhibit A to Complaint.

19. The TLC has also said that if I don’t install the technology into my yellow taxi cab by no later than November 5, 2007, I could face fines and the suspension of my medallion.

20. If the TLC suspends my medallion because I have not signed the contract or if I don’t install the technology, I will face the irreparable harm of not being able to earn my livelihood, while continuing to bear the fixed costs for my medallion and vehicle payments, as well as the costs of supporting my family.

21. On the other hand, if I do sign a contract with a vendor, I will be forced to install the TTS and I believe I will be driven out of my job because I cannot afford the extra costs associated with the TLC technology mandate.

22. I also feel that the GPS component of the TLC mandated technology is an invasion of my privacy because it will track me every single minute of the day, seven days a week and twenty four hours each day, even when I am off-duty and using my yellow taxi vehicle for my own personal use.

23. While I always comply with TLC’s rule prohibiting me from refusing a fare, as

part of my occupation each day I make a personal choice of where to start my shift, when to take my bathroom and food breaks, and many other factors based on what I believe to be most profitable and suitable on a given day. I deem this information and even more significantly, information such as the choices of routes that I make to transport my passengers from Point A to Point B as my proprietary information. GPS will capture and record information. As a small businessman, I feel my right to keep such information private is as valuable to me as Coke's recipe of secret ingredients is to Coke.

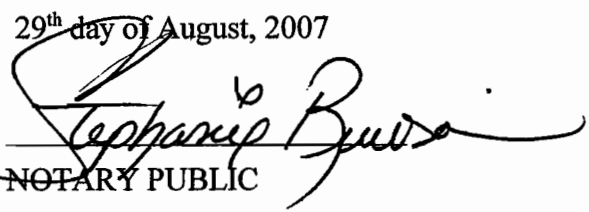
24. The medallion, the yellow taxi cab vehicle, and the hack licence are my properties. I do not think its fair that the government should force me to rip up my taxi cab and put in all this new technology into my property when I never asked for it, I have no desire for it, and it is too expensive for me to afford. When I purchased my medallion, taxicab and obtained my hack license, I did not know that one day the government would be allowed to reach its hands into my property to install four pieces of physical gadgetry and make me bear the exorbitant cost of operating such a technology. My investment in the medallion and yellow taxi cab vehicle should be looked at no differently than that of any other small business owner.

25. If the court does not intervene, **I face suspension of my medallion on September 6th, 2007** for failure to sign a contract with a vendor. I do not want to install TTS into my property and the TLC is forcing me to do so or else face the irreparable harm of both losing my livelihood and suffering a physical permanent change to the inside of my property without my consent.


WILFRED GERMAIN

Sworn to before me this

29th day of August, 2007


NOTARY PUBLIC

STEPHANIE RIVERA
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01RI6138998
QUALIFIED IN KINGS COUNTY
MY COMMISSION EXPIRES DEC. 27, 2009.

EXHIBIT A



Uniformed Services Bureau
24-55 Brooklyn Queens Expressway West
Woodside, NY 11377

Matthew W. Daus, Commissioner/Chair

Today's Date: 8/22/2007

GERMAIN, WILFRED
2240 HOFFMAN AVE
ELMONT, NY 11003

Your Medallion #: 5A35

THIS IS SUMMONS # PIM0086

You are hereby charged with a violation of the N.Y.C. Taxi and Limousine Commission's (TLC) Owners Rules, Sec. 1-11(g), in that as of August 1, 2007, you failed to sign a contract with an authorized taxicab technology service provider to buy, lease, rent or use a Taxicab Technology Enhancements System and Service for each medallion you own.

You are hereby summoned to appear for a hearing at the TLC's Adjudications Division, located at 32-02 Queens Boulevard, Long Island City, New York 11101 at **2:20:00 PM** on **9/6/2007**

WHEN APPEARING AT YOUR HEARING YOU HAVE THE FOLLOWING RIGHTS /OBLIGATIONS:

YOU MUST APPEAR IN PERSON TO ANSWER THIS SUMMONS. THE PENALTY FOR VIOLATION OF SECTION 1-11(g) OF THE TLC'S MEDALLION OWNER'S RULES IS \$250 AND SUSPENSION UNTIL COMPLIANCE. YOUR FAILURE TO APPEAR WILL BE CONSIDERED A DEFAULT.

IF YOU HAVE A CONTRACT OR CONTRACTS WITH AN AUTHORIZED TAXICAB TECHNOLOGY SERVICE PROVIDER, YOU MUST BRING AN ORIGINAL OR ORIGINALS OF THE CONTRACT TO THE HEARING.

1. You must bring with you an original dated contract for the Taxicab Technology Enhancements System and Service for each medallion you own, signed by an authorized contractor and you or your taxicab agent. If your taxicab agent signed on your behalf, you must also bring your original taxicab agent contract.

2. You may be accompanied by an attorney or a non-attorney representative duly authorized by the Commission. If you are a corporation, it may be represented by an officer, director, or employee of the corporation designated as an agent for the corporation. If you are a partnership, it may be represented by any partner. You may also bring a witness(es) and any evidence that supports your case.

3. If you are found in violation of Section 1-11(g), your license will be suspended until compliance and all fines must be paid in cash or by certified check, money order or credit card on the date that the fine is imposed. Failure to pay any fine imposed will result in further grounds to suspend your license(s) and may result in other actions to collect such fine.

4. Failure to appear for your scheduled hearing without having been granted an adjournment or withdrawal of the complaint by the TLC will result in a hearing being held and a decision rendered in your absence, which may result in a fine and/or suspension of your license(s).

5. Any request for an adjournment must be made in person at the TLC's Adjudications Division at least five (5) business days prior to and excluding the hearing date.

COMPLAINANT: Michael Friscia

"I certify that this is a true copy of a summons inserted by me in an envelope addressed to the named respondent at the address set forth thereon and deposited in the normal course of business with the TLC mail service."

TLC Employee Signature

O. Hobbs

Date:

8/23/07

